

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAMUEL RATLEY,

Plaintiff,

-against-

CITY OF TROY, DOMINICK COMITALE, Troy Police Officer,
BRANDON CIPPERLY, Troy Police Officer,

Defendants.

**ANSWER ON
BEHALF OF
DOMINICK
COMITALE**

Case No.: 1:16-cv-0650
(MAD/DJS)

The defendant, Dominick Comitale, for his Answer to the Complaint of the plaintiff states as follows:

INTRODUCTION

1. Denies that it has any knowledge or information sufficient to form a belief thereof as to the truth of any of the allegations contained in paragraph of the complaint herein marked and numbered "1".

JURISDICTION

2. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof of any of the allegations contained in paragraphs of the complaint herein marked and numbered "2", "3" and "4".

PARTIES

3. Denies that he has any knowledge or information sufficient to form a belief thereof as to any of the allegation contained in paragraphs of the complaint herein marked and numbered “5”, “6”, “8” and “10”.

4. Admits the allegations contained in paragraphs of the complaint marked and numbered “7” and “9”.

FACTS

5. This defendant admits so much of paragraph of the complaint marked and numbered “11” as alleges that on the date set forth he was at or near 61 Ingalls Avenue in Troy, New York but denies each and every other allegation contained in said paragraph.

6. This defendant admits so much of paragraph of the complaint marked and numbered “12” as alleges that he was at or near 62 Ingalls Avenue on the date set forth but denies each and every other allegation contained in said paragraph.

7. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “13” through “22”, inclusive, except as follows:

a) Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof any of the allegation set forth in paragraph of the complaint marked and numbered “17”; and

b) Admits the allegations set forth in paragraphs of the complaint marked and numbered “18” and “22”.

8. Denies each and every allegation contained in paragraph of the complaint marked and numbered "23", except admits that he sustained certain personal injuries due to his involvement with the plaintiff.

9. Admits so much of paragraph of the complaint marked and numbered "24". As alleges that he was a party to the lawsuit described but denies each and every other allegation set forth therein.

10. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof as to any of the allegations contained in paragraphs of the complaint marked and numbered "25", "26", "27" and "28".

11. Denies each and every allegation contained in paragraphs of the complaint marked and numbered "29", "30" and "31", except admits that on the date set forth the plaintiff was convicted following a jury trial of the charge of having in his possession an open container of alcoholic beverage.

12. Denies that he has any knowledge or information sufficient to form a belief as to the truth thereof each and every allegation set forth in paragraph of the complaint marked and numbered "32a".

13. Admits so much of the allegations contained in paragraphs of the complaint marked and numbered "32b", "32c" and "32d" as alleged that he was a party to the lawsuits described therein but denies each and every other allegation therein contained.

14. Denies each and every allegation contained in paragraph of the complaint marked and numbered "33".

15. Denies that he has any knowledge or information sufficient to form a belief thereof as to any of the allegations set forth in paragraphs of the complaint marked and numbered “34” and “35”.

AS TO THE FIRST CAUSE OF ACTION

16. This defendant repeats and realleges each and every admission and denial set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, with the same force and effect as if again set forth at length here.

17. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “37”, “38” and “39”.

AS TO THE SECOND CAUSE OF ACTION

18. This defendant repeats and realleges each and every admission and denial set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, and “17” with the same force and effect as if again set forth at length here.

19. Denies each and every allegation contained in paragraph of the complaint marked and numbered “41”, “42”, and “43”.

AS TO THE THIRD CAUSE OF ACTION

20. This defendant repeats and realleges each and every admission and denial set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17” and “19” with the same force and effect, as if again set forth at length here.

21. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “45”, “46” and “47”.

AS TO THE FOURTH CAUSE OF ACTION

22. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19” and “21” with the same force and effect as if again set forth at length here.

23. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “49”, “50”, and “51”.

AS TO THE FIFTH CAUSE OF ACTION

24. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19”, “21” and “23” with the same and force and effect as if again set forth at length here.

25. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “53”, “54” and “55”.

AS TO THE SIXTH CAUSE OF ACTION

26. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19”, “21”, “23”, and “25” with the same force and effect as if again set forth at length here.

27. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “57”, “58”, “59”, “63”, “64”, and “65” insofar as said allegations pertain to this defendant.

28. Denies that he has any knowledge or information sufficient to form a belief thereof as to any of the allegations contained in paragraphs of the complaint marked and numbered “60”, “61”, and “62”.

**AS TO THE SEVENTH CAUSE OF ACTION AGAINST THE DEFENDANT
CITY OF TROY AND THIS DEFENDANT**

29. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19”, “21”, “23”, “25”, “27” and “28” with the same force and effect as if again set forth at length here.

30. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “67” through “70”, inclusive, insofar as said allegations pertain to this defendant.

**AS TO THE EIGHTH CAUSE OF ACTION AGAINST THE DEFENDANT
CITY OF TROY**

31. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19”, “21”, “23”, “25”, “27”, “28”, and “30” with the same force and effect as if again set forth at length here.

32. Denies each and every allegation contained in paragraphs of the complaint marked and numbered “72” and “73”, insofar as said allegations pertain to this defendant.

DEMAND FOR PUNITIVE DAMAGES

33. This defendant repeats and realleges each and every allegation set forth in paragraphs of this answer marked and numbered “1” through “15”, inclusive, “17”, “19”, “21”, “23”, “25”, “27”, “28”, “30” and “32” with the same force and effect as if again set forth at length here.

34. Denies each and every allegation contained in paragraph of the complaint marked an numbered “74” insofar as said allegations pertain to this defendant.

GENERAL DENIAL

35. This defendant denies any allegations not specifically admitted, denied or controverted herein and denies that plaintiff is entitled to any of the relief requests in the Wherefore clause.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:

36. The complaint fails to state a claim or cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:

37. Upon information and belief that some or all of the asserted claims set forth in the complaint are barred by the applicable statutes of limitation and/or the provisions of Section 50-i of the General Municipal Law of the State of New York.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:

38. That on the date of May 8, 2015, the plaintiff was convicted following a jury trial had in the Troy Police Court of the charge of having in his possession an open container of alcoholic beverage and this established as a matter of law that there was probable cause to arrest, detain and prosecute him.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:

39. At all times herein this defendant acted with regard to the plaintiff in good faith and with due care and with due regard for legitimate public reasons and compelling government interest and his actions were prudent and were objectively reasonable.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:

40. That he is entitled to qualified immunity as to each and every claim of the plaintiff brought pursuant to the provisions of Title 42 U.S.C. Section 1983.

WHEREFORE, this defendant demands judgment dismissing the complaint of the plaintiff together with costs, disbursements and attorney's fees.

Dated: August 22, 2016.



Donald J. Shanley, Esq.

Bar Roll No.: 102582

Pattison, Sampson, Ginsberg & Griffin, P.C.

Attorneys for Defendant,

Dominick Comitale

22 First Street - P. O. Box 208

Troy, New York 12181-0208

(518) 266-1029

TO: Jessica M. Gorman, Esq.
Attorneys for Plaintiff
74 Chapel Street, 2nd Floor
Albany, New York 12207